



Report to Utah State Library Board Legislation from 2009 Session

State Librarian - Donna Jones Morris

House Bills

H.B. 45, Administration/Finance: Per Diem and Travel Expenses for State Boards and Commissions

Chief Sponsor: Douglas C. Aagard

Senate Sponsor: Peter C. Knudson

General Description:

"This bill modifies the Administrative Services Code by amending provisions related to the establishment of per diem and travel expenses for a member of a board, commission, council, or committee in the executive branch of state government."

Highlighted Provisions:

"This bill:

- defines terms;
- modifies procedures for the establishment of per diem rates by the Division of Finance for a member of a state board, commission, council, or committee in the executive branch of state government;
- amends the exemption for higher education employees to apply only if higher education is paying the per diem or travel expenses;
- allows other governmental entities to adopt the established rates by reference;
- provides that a member who is a government employee that is being paid as an officer or employee while performing the member's service may not receive additional per diem or travel expenses;
- allows a member of the board or commission to decline to receive per diem;
- modifies procedures for the establishment of travel expenses by the Division of Finance for a member of a board, commission, council, or committee in the executive branch of state government;
- allows a member of the board or commission to decline to receive travel expenses; and
- makes technical changes."

Ramifications:

- There appear to be no immediate or significant ramifications to State Library Board members, simply changes to the reimbursement procedures.

H.B. 118: Archives and GRAMA Revisions

Chief Sponsor: Douglas C. Aagard

Senate Sponsor: Brent H. Goodfellow

General Description:

"This bill modifies provisions in the Archives and Records Service chapter and in the Government Records Access and Management Act."

Highlighted Provisions:

"This bill:

- adds a title section for the Archives and Records Service chapter;
- provides definitions;
- modifies language to comply with standardized definitions;
- provides that intentional and knowing destruction or mutilation of the record-copy of a record in violation of a retention schedule is a class B misdemeanor;
- provides cross references between the Archives and Records Service chapter and the Government Records Access and Management Act;
- clarifies that an employee of a governmental entity may be disciplined or fired for intentionally and knowingly destroying or mutilating a record in violation of a retention schedule; and
- makes technical changes."

Relevant Changes:

"63G-2-803. No individual liability for certain decisions of a governmental entity.

(1) Neither the governmental entity [~~or political subdivision~~], nor any officer or employee of the governmental entity [~~or political subdivision~~], is liable for damages resulting from the release of a record where the person or government requesting the record presented evidence of authority to obtain the record even if it is subsequently determined that the requester had no authority.

(2) Neither the governmental entity [~~or political subdivision~~], nor any officer or employee of the governmental entity [~~or political subdivision~~], is liable for damages arising from the negligent disclosure of records classified as private under Subsection 63G-2-302(1)(f) unless:" *[willful misconduct or gross negligence was involved]*

Ramifications:

- There appear to be no immediate or significant ramifications to the State Library or Board, simply changes to the administrative requirements of the GRAMA procedures.

H.B. 122: Government Records Access and Management Act Amendments

Chief Sponsor: Douglas C. Aagard

Senate Sponsor: Curtis S. Bramble

General Description:

"This bill modifies provisions of the Government Records Access and Management Act related to protected litigation records."

Highlighted Provisions:

"This bill:

- clarifies that records may be classified as protected if they are prepared in anticipation of litigation;
- clarifies that work product records may be classified as protected if the record involves anticipated or pending litigation;
- provides that records concerning a governmental entity's strategy may be classified as protected if the record is prepared for anticipated litigation, rather than only for pending litigation;
- prohibits a governmental entity's chief administrative officer, the records committee, and a court from releasing certain protected records via means of a balancing test, unless it is determined, by a preponderance of the evidence or by clear and convincing evidence, as applicable, that the public interest favoring access to the record outweighs the interest favoring restriction of access to the record; and
- makes technical amendments."

Ramifications:

- There appear to be no immediate or significant ramifications to the State Library or Board.

H.B. 123: Retail and Library Theft Amendments

Chief Sponsor: Francis D. Gibson

Senate Sponsor: David P. Hinkins

General Description:

This bill modifies the Criminal Code regarding the use of photographs of property in prosecutions for theft.

Highlighted Provisions:

"This bill:

- deletes the provision of the Criminal Code that allows photographs of merchandise and library materials to be used as evidence in theft prosecutions [as] if the items themselves had been introduced as evidence.
- **REPEALS: 76-6-605**, as last amended by Laws of Utah 1989, Chapter 22"

Relevant Changes:

The Section referred to in the "REPEALS" is cited below:

Section 76-6-605. Photographs of items allegedly taken or converted -- Admissibility -- Procedure.

(1) As used in this section "items" means:

(a) goods or merchandise as defined in Section 76-6-601; and

(b) library materials, as defined in Title 76, Chapter 6, Part 8.

(2) In any prosecution for a violation of Section 76-6-602 or Title 76, Chapter 6, Part 8, Library Theft, photographs of the items alleged to have been taken or converted are competent evidence of the items and are admissible in any proceeding, hearing, or trial as if the items themselves were introduced as evidence.

Ramifications:

- This legislation appears to repeal the stated section that has allowed libraries to return stolen items to circulation after recovery, and use a photograph of the item as evidence in criminal theft cases.
- This legislation appears to require stolen library materials to remain in evidence and out of circulation until a case is disposed and evidence released to the library.

H.B. 236: Department of Community and Culture Grants**Chief Sponsor: Sheryl L. Allen****Senate Sponsor: Ralph Okerlund**

Cosponsors: Jim Bird, Jackie Biskupski, Julie Fisher, Kory M. Holdaway, Steven R. Mascaro, Jennifer M. Seelig, Christine F. Watkins

General Description:

"This bill modifies provisions of Title 9, Community and Culture Development, regarding grant programs administered by certain divisions, offices, and boards within the Department of Community and Culture in the divisions of Arts and Museums, State Library, and State History."

Highlighted Provisions:

"This bill:

- provides that the Board of Directors of the Utah Arts Council, the Museum Services Advisory Board, the State Library Board, and the Board of State History prepare and submit an annual request to the governor and Legislature for prioritized capital facilities grants to be awarded to eligible applicants;
- provides an annual cutoff date for receiving capital facilities grant applications and for submission of prioritized capital requests to the governor and Legislature;
- provides for progress reports as a precondition to the dispersal of grant funds; and
- makes certain technical changes."

Relevant Changes:

"Section 9-7-205. Duties of board and director.

(1) The board shall:

- (a) promote, develop, and organize a state library and make provisions for its housing;
- (b) promote and develop library services throughout the state in cooperation with ~~[any and all]~~ other state or municipal libraries, schools, or other agencies wherever practical;
- (c) promote the establishment of district, regional, or multicounty libraries as conditions within particular areas of the state may require;
- (d) supervise the books and materials of the state library and require the keeping of careful and complete records of the condition and affairs of the state library ~~[to be kept]~~;
- (e) establish policies for the administration of the division and for the control, distribution, and lending of books and materials to those libraries, institutions, groups, or individuals entitled to them under this chapter;
- (f) serve as the agency of the state for the administration of ~~[any]~~ state or federal funds that may be appropriated to further library development within the state;
- (g) aid and provide general advisory assistance in the development of statewide school library service and encourage contractual and cooperative relations between school and public libraries;

- (h) give assistance, advice, and counsel to all tax-supported libraries ~~[of any type]~~ within the state and to all communities or persons proposing to establish them and conduct courses and institutes on the approved methods of operation, selection of books, or other activities necessary to the proper administration of a library;
- (i) furnish or contract for the furnishing of library or information service to state officials, state departments, or any groups that in the opinion of the director warrant the furnishing of those services, particularly through the facilities of traveling libraries to those parts of the state otherwise inadequately supplied by libraries;
- (j) where sufficient need exists and if the director considers it advisable, establish and maintain special departments in the state library to provide services for the blind, visually impaired, persons with disabilities, and professional, occupational, and other groups;
- (k) administer a depository library program by collecting state publications, and providing a bibliographic information system;
- (l) require ~~[that]~~ the collection of information and statistics necessary to the work of the state library ~~[be collected,]~~ and ~~[that]~~ the distribution of findings and reports ~~[be published];~~
- (m) make any report concerning the activities of the state library to the governor as ~~[he]~~ the governor may require; and
- (n) develop standards for public libraries.
- (2) (a) By September 30 of each year, the board shall prepare and submit a request to the governor and the Legislature for prioritized capital facilities grants to be awarded to eligible libraries under this chapter.
- (b) The board shall prepare a list of the requested capital facilities grants in a prioritized order and include a written explanation of:
- (i) the total grant amount requested in the list; and
- (ii) the basis of its prioritization of requested grants on the list.
- (c) The board shall accept applications for capital facilities grants through June 1 of each year, prior to compiling and submitting its yearly request to the governor and Legislature under Subsection (2)(a).
- (3) (a) For a grant of at least \$25,000, the division shall make quarterly disbursements to the grant recipient, contingent upon the division receiving a quarterly progress report from the recipient.
- (b) The division shall:
- (i) provide each grant recipient with a progress report form for the reporting purposes of Subsection (3)(a); and
- (ii) include reporting requirement instructions with the form.
- ~~[(2)]~~ (4) The director shall, under the policy direction of the board, carry out the responsibilities under Subsection (1).

Ramifications:

- This revision of the State Library authority statute, Section 9-7-205, appears to contain some nonsubstantive grammatical revisions, and one substantive addition of a "capital facilities grants" program.
- It appears that the State Library will need to create a new Administrative Rule (R223-3) to implement this statute and administer this new program.
- It appears that the State Library or Board will need to establish a definition of "eligible libraries".

Senate Bills

S.B. 16: Prohibited Gang Activity

Chief Sponsor: Jon J. Greiner

House Sponsor: Curtis Oda

General Description:

"This bill amends the Criminal Code by creating the offense of failure to disperse from loitering in a public place by groups that include gang members."

Highlighted Provisions:

"This bill:

- provides that a peace officer may order a group to disperse if the group includes persons an officer reasonably believes to be gang members and is in an area where loitering of groups that include gang members is prohibited by the local law enforcement agency;
- requires that the officer warn the group that failure to disperse is subject to arrest;
- requires municipal and county legislative bodies to designate areas in their jurisdictions where police officers may require groups that include gang members to disperse;
- provides that failure to disperse upon the order of an officer is a class B misdemeanor, and a subsequent failure to disperse is a class B misdemeanor subject to a fine of \$100;
- provides that if, after being ordered to disperse, a member of the group loiters again within specified times and at specified places, the person is guilty of a class B misdemeanor and is subject to a fine of \$100; ..."

Relevant Changes:

"(5) (a) "Public place" means any location or structure to which the public or a substantial group of the public has access, and includes:

(i) a sidewalk, street, or highway;

(ii) a public park, public recreation facility, or any other area open to the public;

(iii) a shopping mall, sports facility, stadium, arena, theater, movie house, or playhouse, or the parking lot or structure adjacent to any of these; and

(iv) the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and businesses.

(b) "Public place" includes the lobbies, hallways, elevators, restaurants and other dining areas, and restrooms of any of the locations or structures under Subsection (5)(a)."

Ramifications:

- This legislation appears to provide some additional protection to local libraries in that it provides law enforcement officers additional authority to disperse gangs of individuals.
- It appears that USL only needs to be knowledgeable of this statute to provide information to local libraries with whom we consult to ensure they are also knowledgeable.

S.B. 26: Open and Public Meetings Act - Meeting Record

Chief Sponsor: Peter C. Knudson

House Sponsor: Douglas C. Aagard

General Description:

"This bill modifies the Open and Public Meetings Act by amending provisions related to minutes and a recording of an open meeting."

Highlighted Provisions:

"This bill:

- clarifies that the minutes of a meeting must include information requested to be added by a member only if that information was part of the proceedings of the meeting;
- provides specific circumstances as to when the written minutes of an open meeting become a public record;
- requires a public body to establish and implement procedures for approval of written minutes;
- requires that a recording of an open meeting must be available to the public for listening within three business days after the meeting;
- repeals a requirement that a recording must be converted to written minutes within a reasonable time upon request;
- provides that a meeting recording is not required for site visits or traveling tour or for certain small local districts; and
- makes technical changes."

Relevant Changes:

"(4) ...

(a) Written minutes that have been prepared in a form awaiting only formal approval by the public body are a public record.

(b) Written minutes shall be available to the public within a reasonable time after the end of the meeting.

...

(e) Written minutes are the official record of action taken at the meeting.

(f) A recording of an open meeting shall be available to the public for listening within three business days after the end of the meeting.

...

(7) Notwithstanding Subsection (1), a recording is not required to be kept of:

(a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the public body; ..."

Ramifications:

- It appears that USL needs to be knowledgeable of this statute to ensure compliance by it and the State Library Board.
- It appears that USL needs to be knowledgeable of this statute to provide information to local libraries with whom it consults to ensure they are also knowledgeable.

S.B. 39 : Immigration Amendments

Chief Sponsor: Scott K. Jenkins

House Sponsor: Brad L. Dee

General Description:

"This bill modifies provisions of the Identity Documents and Verification Act.

Highlighted Provisions:

"This bill:

- defines a contract in relation to verification of the federal authorization status of a new employee as an agreement for the procurement of services that is awarded through a request for proposals process with a public employer;
- provides an exception from verification of lawful presence in the country for an individual who is to receive a state public benefit under Title 49, Utah State Retirement and Insurance Benefit Act; and
- makes certain technical changes."

Relevant Changes:

63G-11-103 (Effective 07/01/09). Status verification system -- Registration and use -- Performance of services -- Unlawful practice.

"(1) As used in this section:

(a) "Contract" means an agreement for the procurement of goods or services that is awarded through a request for proposals process with a public employer and includes a sole source contract."

63G-11-104 (Effective 07/01/09). Receipt of state, local, or federal public benefits -- Verification -- Exceptions -- Fraudulently obtaining benefits -- Criminal penalties -- Annual report.

"(1) Except as provided in Subsection (3) or where exempted by federal law, an agency or political subdivision of the state shall verify the lawful presence in the United States of an individual at least 18 years of age who has applied for:

(a) a state or local public benefit as defined in 8 U.S.C., Sec. 1621; or

(b) a federal public benefit as defined in 8 U.S.C., Sec. 1611, that is administered by an agency or political subdivision of this state."

Ramifications:

- There prevailing local legal opinions assert that library services do not fall under the "benefits" definition.
- It appears that USL may need an AGO Opinion regarding the interpretation and/or impact on USL of this statute.
- It appears that USL needs to be knowledgeable of this statute to provide information to local libraries with whom it consults to ensure they are also knowledgeable.